

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

RICHARD C. GARAY,

V.

TDCJ, ET AL.

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C.A. NO. C-03-327

OPINION AND ORDER DENYING WITHOUT PREJUDICE
MOTION FOR PREPARATION OF TRANSCRIPTS
AT PUBLIC EXPENSE

Plaintiff, a prisoner proceeding *pro so* and *in forma pauperis* filed this lawsuit pursuant to 42 U.S.C. § 1983, alleging various constitutional violations. Summary judgment in favor of defendants was entered March 15, 2005 (D.E. 49). Final judgment was entered the same day (D.E. 50). On March 28, 2005, plaintiff filed a motion for reconsideration (D.E. 52). The matter was reopened and his arguments considered, but the final judgment was reinstated April 14, 2005 (D.E. 54). Plaintiff filed his notice of appeal April 14, 2005 (D.E. 55). Plaintiff has been permitted to proceed on appeal *in forma pauperis*. Pending is plaintiff's motion for preparation of transcripts at the expense of the United States (D.E. 63).

Fees for transcripts furnished to persons permitted to appeal in forma pauperis shall be paid by the United States if the trial judge or a circuit judge certifies that the appeal is not frivolous (but presents a substantial question). 28 U.S.C. § 753(f). Payment by the United States for printing of the record on appeal and transcripts may also be ordered only if the record or transcript is **required** by the appellate court. 28 U.S.C. § 1915(c); Harvey v. Andrist, 754 F.2d 569, 571 (5th Cir.), cert. denied, 471 U.S. 1126, 105 S.Ct. 2659 (1985). In this case plaintiff has not set forth the issues he

plans to raise on appeal; therefore a decision cannot be made as to whether the appeal is frivolous. The Fifth Circuit Court of Appeals has not indicated it required a transcript of any of the proceedings in this case. Moreover, the case was resolved on summary judgment, and plaintiff has not demonstrated why any transcripts would be necessary to brief and argue his points of error to the Fifth Circuit Court of Appeals.

Accordingly, plaintiff's motion for preparation of the transcript at the expense of the United States (D.E. 63) is denied without prejudice.

ORDERED this 1st day of July, 2005.


B. JANICE ELLINGTON
UNITED STATES MAGISTRATE JUDGE